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In the house: O! the *accident!* for such it was always considerrd to have been, and was treated as such.

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A hunter went out to kill a bear, some of those animals having been seen in the neighbourhood. In an obscure part of a wood, he saw at a distance something black moving, which he took for a bear, the whole of the animal not being visible to him; he fired, and found he had shot a black horse. Having discovered the mistake, he informed the owner of what had happened, expressing at the same time his regret that he was not possessed of a single horse, with which he could replace the one he had shot. What! replied the Indian whose horse had been killed, do you think I would accept a horse from you, though you had one to give, after you have satisfied me that you killed mine *by accident?* No, indeed! for the same misfortune might also happen to me.

An aged Indian who had gone out to shoot a turkey, mistook a black hog in the bushes for one of those birds, and shot him; finding out by enquiry to whom the hog belonged, he informed the owner of the mistake he had made, offering to pay for the hog; which the other, however, not only would not accept of, but having brought the meat in, gave him a leg of the animal, because he thought that the unfortunate man, as well on account of his disappointment, in not feasting on turkey as he expected soon to do when he shot the hog, as for his honesty in informing of what he had done, was *entitled* to a share of what he had killed.

Two Indians with a large canoe, going down the Muskingum river to a certain distance, were accosted by others going by land to the same place, who requested them to take their heavy articles, as kettles, axes, hoes, &c. into their canoe, which they freely did, but unfortunately were shipwrecked at the rocks of White Eyes's falls (as the place is called,) where the whole cargo was lost, and the men saved themselves by swimming to the

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672 685 shore. The question being put and fully discussed, whether those men with the canoe, who had taken charge of the property of the others, and by this neglect lost the whole, were not liable to pay for the loss? it was decided in the negative, on the following grounds:

1. That the canoe men had taken the articles on board, with the pleasing hope that they thereby would oblige their fellow men, and did not expect any recompense for that service.

2. That although they might have avoided the danger and the loss, by unloading the canoe at the head of the fall, and carrying the cargo by land below it, (which was but a short distance,) as was customary, when the river was not in a proper state to run through, yet that, had those who travelled by land been in the place of those in the canoe, they might, like them, have attempted to have run through, as is sometimes done with success, and been equally unfortunate.

3. That the canoe men having had all their own property on board, which was all lost at the same time, and was equally valuable to them, it was clear that they had expected to run safely through, and could not have intentionally or designedly brought on themselves and others the misfortune which had happened, and therefore the circumstance must be ascribed entirely to *accident*.

672 Such is the disposition of the Indians with regard to those who inadvertently meet with a disaster, whereby others are injured. They are ready to overlook a fault, and more disposed in such cases to commiserate, than to punish; but with those who wilfully and intentionally commit aggressions and injure others, they think and [626] act quite differently; a malicious person is generally despised, and if he intrudes himself into good company, they will, without saying a word, steal off one by one, and leave him alone to suffer the mortification which it is intended he should feel. For murderers and thieves they have no compassion, and punish them according to

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"they crowd quite close up to us, stare at us, and almost "tread upon our heels to get nearer. We, on the con- "trary, though, perhaps, not less curious than they are, "to see a new people or a new object, keep at a reason- "able distance, and yet see what we wish to see." They also remark, that when the white people meet together, they speak very loud, although near to each other, from whence they conclude that they must be hard of hearing. "As to us," they say, "we never speak loud "when we come together, and yet we understand each "other distinctly; we only speak in a high tone of voice "before a public audience, in council, at the head of our "warriors, or when we are met together for some im- "portant purpose."

The Indians also observe, that the white people must have a great many thieves among them, since they put locks to their doors, which shews great apprehension that their property otherwise would not be safe: "As to us," say they, "we entertain no such fears; thieves are very "rare among us, and we have no instance of any person "breaking into a house. Our Indian lock is, when we "go out, to set the corn pounder or a billet of wood "against the door, so that it may be seen that no body "is within, and there is no danger that any Indian would "presume to enter a house thus secured." Let me be permitted to illustrate this by an anecdote.

In the year 1771, while I was residing on the Big Beaver, I passed by the door of an Indian, who was a trader, and had consequently a quantity of goods in his house. He was going with his wife to Pitts- burg, and they were shutting up the house, as no per- son remained in it during their absence. This shut- ting up was nothing else than putting a large hominy pounding-block with a few sticks of wood outside against the door, so as to keep it closed. As I was looking at this man with attention while he was so employed, he ad- dressed me in these words: "See my friend, this is an

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685 "Indian lock that I am putting to my door." I an-
829 swered, "Well enough; but I see you leave much pro-
609 "perty in the house, are you not afraid that those arti-
"cles will be stolen while you are gone?"—"Stolen! by
"whom?—"Why, by Indians, to be sure." "No, no,"
replied he, "no Indian would do such a thing, and unless
"a white man or white people should happen to come
"this way, I shall find all safe on my return."

829 The Indians say, that when the white people en-
609 camp in the woods they are sure to lose something; that
when they are gone, something or another is always
found which they have lost, such as a knife, flints, bul-
lets, and sometimes even money. They also observe that
the whites are not so attentive as they are to choosing
an open dry spot for their encampment; that they will
at once set themselves down in any dirty and wet place,
provided they are under large trees: that they never
look about to see which way the wind blows, so as to be
able to lay the wood for their fires in such a position
that the smoke may not blow on them; neither do they
look up the trees to see whether there are not dead limbs
that may fall on them while they are asleep; that any
wood will do for them to lay on their fires, whether it be
dry or wet, and half rotten, so that they are involved du-
ring the whole night in a cloud of smoke; or they take
such wood as young green oak, walnut, cherry, chesnut,
&c. which throws sparks out to a great distance, so that
their blankets and clothes get holes burned in them, and
sometimes their whole camp takes fire. They also re-
mark that the whites hang their kettles and pots over a
fire just kindled, and before the great body of smoke has
passed away.

829 They, however, acknowledge that the whites are inge-
609 nious, that they make axes, guns, knives, hoes, shovels,
177 pots and kettles, blankets, shirts, and other very conve-
nient articles, to which they have now became accustom-
ed, and which they can no longer do without. "Yet,"

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680 such things in nature as virtue on the one hand and crime on the other.

682 But nothing is so false as this picture of the Indians. The worst that can be said of them is, that the passion of revenge is so strong in their minds that it carries them beyond all bounds. But set this aside, and their character is noble and great. They have no written laws, but they have usages founded on the most strict principles of equity and justice. Murder with them is punished with death. It is true, that as was the case not many centuries ago among the most civilised nations of Europe, the death of a man may be compounded for with his surviving relations; if, however, they do not choose to accept of the terms offered, any one of them may become the executioner of the murderer.

685 Thieves are compelled to restore what they have stolen, or to make satisfactory amends to the injured party; in their default, their nearest relations are obliged to make up the loss. If the thief, after sufficient warning, continues his bad practices, he is disowned by his nation, and any one may put him to death the next time that he is caught in the act of stealing, or that it can be clearly proved to have been committed by him. I have given two instances of the kind in a former chapter,* and I recollect another which will put what I have said in the strongest light. I once knew an Indian chief, who had a son of a vicious disposition, addicted to stealing, and who would take no advice. His father tired and unable to satisfy all the demands which were made upon him for the restitution of articles stolen by his son, at last issued his orders for shooting him the next time he should be guilty of a similar act.

683 As to crimes and offences of an inferior nature to murder and theft, they are left to the injured party to punish in such manner as he thinks proper. Such are personal insults and threats, which, among those people are not

* Ch. 7. p. 97.

3:Zeisberger, M-5 (1767-1780)1910
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orgy, put him out of the way, pretending to be very drunk and not capable of judging of the nature of his deed. Under such circumstances, according to ancient usage, the murderer must pay a hundred fathoms of wampum for the murder of a man and two hundred for that of a woman. If he is too poor to raise the amount, which is commonly the case, his friends help to raise it and turn it over to the relatives of the slain, at the same time delivering a speech. If any one has murdered his own relative, he usually escapes without difficulty, for the family can easily find reason for the deed, not wishing to lose two of their friends at once. Should a murderer not feel himself safe, he goes to another region or town where he is a stranger.

In case of theft, which is held as a disgrace among them, nothing further is required than that the thief must restore what he has stolen, pay for it or give something in exchange. If justice cannot be satisfied in one of these ways, because the thief has nothing, loss falls on the party robbed, or the friends of the thief, if such he has, must make good the loss.

When a whole party goes out to hunt, they govern themselves according to the wishes of the oldest or the most expert, particularly if he be a member of the council. It is not considered good form for one to leave the party before the end of the hunt. If one has wounded a deer and another followed and killed it, the skin belongs to the first and either the half or the whole of the meat to the latter. If several take aim at once and they cannot determine which of them made the best shot, the skin is given to the oldest of the party, or, if he happened to be one of those taking aim, he is said to have killed the animal. Old men, therefore, no longer able to shoot well, generally get their share of the skins, if they only aim now and then with the others though they do not hit the mark.

Such old men, accompanying a hunting party, get both meat and skins, for the good hunters will not let them return empty-handed. They have, in general, and the Unami in particular, the custom that when a huntsman has shot a deer, and another Indian joins him or only looks on at a distance, he immediately gives him the whole animal and goes in pursuit of another.

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426 672 If a debtor is unable to pay, the creditor duns his friends, who must pay and rarely refuse to do so. Occasionally, the debts of friends must be paid years after they were contracted, even after the death of the debtor, if only the debt can be proven.

685 A purchaser, dissatisfied with what he has bought or the price paid, is allowed to return what he has purchased and recover what was paid. One who has done an injury, killed a hog or chicken or occasioned loss in some other way, and obstinately refuses to make good the injury, cannot be touched. His friends may make good the loss. Should the offender, in the long run, not heed the admonitions of his friends, they will drive him away.

721 Hence, it is that in wars with whites practically all the tribes have been involved more or less. If the nation, as such, has taken no part in the war, these unmanageable offenders have gone with the fighting peoples, despite the warnings and threats of the chiefs. The same is true of the present conflict.[258] The Delaware chiefs had determined at its beginning to remain neutral, daily admonishing their people not to allow themselves to be persuaded to go into the war. The nation as such remained true to the determination of the chiefs, being constantly and earnestly watched, but obstinate offenders took part against all order and command.

619 Though the Indians are a free people and not subject to the rule of any one, each nation, considering itself a unit, has a kind of government of its own choosing, imperfect as it may be. This holds good of all the North American nations. A nation is constituted of three principal Tribes, the first or leading tribe is called *Packoango*, i. e., the tribe of the great Tortoise, the second, *Blem*, the Turkey Tribe, the third, *Ptucksit*, the Wolf 622 Tribe. Each of the tribes has its chief and each chief his coun- 623 sellors. The chief of the Tortoise Tribe is the first in rank and, together with the other two chiefs, deals with all matters of national interest, particularly, such as have reference to nations with whom, according to treaty, friendly relations are to be cultivated. A chief may not presume to rule over the people, as in that case he would immediately be forsaken by the whole tribe, and his counsellors would refuse to assist him. He must

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moving from one place to another according to inclination, yet they generally dwell together for the sake of the help they can render each other in building and in fencing up the great field where all may plant and be sure that their pieces of ground will not be molested by cattle. If they have a good chief he may be very useful to the people, for under him they believe themselves to dwell in safety as it is his business to keep the peace with other nations and order among his own people in so far as this may be secured among the Indians who are a free people recognizing neither compulsion nor authority to punish. By means of discretion and diplomacy a chief may accomplish much. At times he may not tell his counsellors, much less the people, what his ultimate purposes are, for fear of not attaining them. Moving forward step by step he may gain his end. Of violence, murder (except in drunkenness), robbery, theft, one rarely hears among the Indians. They may leave all they have caught in the chase and their utensils in the forest, secured indeed against wild animals such as wolves and bear, but not hidden from the Indians. They often hang their things to trees in the woods where everyone passing by may see them and leave them there for days and weeks, yet they are never molested. Stolen goods may not be easily concealed among them, and whoever has been guilty of theft must restore or repay lest a horse or two or even his gun, which is an Indian's means of sustenance, be taken from him or his friends summoned to make good the injury, even years after the theft has been committed. The latter will rather pay than be much and often called upon to do so.

Few houses are locked when the people go out. A stick is placed against the door on the outside and the passerby sees that no one is at home and does not enter. Each one is free to do as he pleases without let or hindrance, yet he will rarely do another injury.

Their old people, even though they are only able to crawl about and are a source of trouble and have nothing to bequeath to anyone, are faithfully cared for by their friends who seem to wish that their lives should be prolonged. That they are unmerciful and insensible towards the poor and needy may not be said of them. Even strangers who have no friends are

9: Kinietz E-4,5 (1938) 1946
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	Williams	Van der Donck	Lindeström	Zeisberger	Heckewelder	Johnston	Pipe	Chipps	J. W.	W. T.	E. R.	W. L.
+ = element present − = element denied (+) or (−) = source ambiguous • = informant could not or would not say S = some, sometimes, or several † or * = see Ethnographic Notes, pp. 79-137 for additional information												
Chiefs—Continued												
237. War chief chosen through vision power				+	+				+	+	+	+
238. Body of counselors †	+	+		+	+	+	+	+	+(+)	+	+•+	+
239. Name *upwaenowuk							+		(+)	+	+	+
240. Chosen by people						+	+	•	+	+	+	+
241. Consider all matters of importance to tribe		+		+	+	+	+	+	+	+	+	+
242. Counselors and chiefs only present at council meetings		S?		S	S	+	+		S	S	S	S
243. All adults except women admitted				S				+	+	S	S	S
Justice												
244. Any mode of compelling payment of debt				+		−	−	−	−	−	−	−
245. Relatives of debtor make restitution				+	+		S		+(+)		+	+
246. Creditor uses force							S	+	•+		+	−
247. Redress for civil injuries (theft)	•+	+	+	+	+	−	−	−	+	−	+	+
248. Injured party applies to chief		+			−		+		+		+	+
249. Any punishment inflicted by nation if restitution is made		−		−	−	−	−	−	−	−	−	−
250. Injured party has right to kill thief on second offense		−			+			+	+		+	+
251. Murder punished	+	+	+	+	+	+	+	+	+	+	−	+
252. By nation	+	−	+	−	−	−	+	−	+	•	−	+
253. Breach closed by presents		+		+	+	+	+	+	+	+	+	+
254. Amount of wampum as presents †				+	•	+	+	+	+	+	+	+
255. Lacking presents, revenge by relatives	+	+	+		+	+	+	+	+	−	+	+
256. Revenge duty of any individual		•+				−	−	−	•+	•	−	•+
257. Any one interfere from duty		•+									•	
258. Guilty submits	+	•−				+	+	+	−	+	•	s
259. Feud arise from revenge		•+					−	−	−	−	•	−
260. Revenge approved by nation	+		+	+		+		+	+	+	•	+
261. Crimes. Theft	+	+		+	+	+	+	+	+	+	+	+
262. Rape		+					+		+	+	+	+
263. Adultery	+	+		+			+	+	+	+	+	•+
264. Desertion of children								+	+	(+)		
265. Drunkenness and slander	+							+	+	(+)		

9: Kinietz E-4, 5 (1938) 1946
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Since debts were not discussed in detail in the first 686
period, we cannot tell whether their treatment was the same as Zeisberger recorded in the second period or not (244). Zeisberger said that if a debtor was unable to pay, the creditor dunned his friends who had to pay and rarely refused to do so. He thus implied that if a debtor was able to pay he was forced to do so. In the third and fourth periods the consensus was that there was no mode of compelling the payment of a debt, but that relatives or friends usually made restitution (245). Force might be used to get restitution, or, failing that, as a punishment (246). On this last element W. L. was the only dissenter. He said that force was never used because it was unnecessary, that anything borrowed was a gift and did not have to be returned unless a promise to do so was made by the borrower, and that a promise of this sort was always kept.

In spite of W. T.'s view of conditions among the Indians and 686
particularly the Delaware before much contact with the whites 177
had occurred, all of the first and second period accounts give evidence of a native mode of dealing with theft (247). It should be stated, however, that examples were said to be much more infrequent than among contemporaneous Europeans. No punishment except restitution was reported for the first offense (249). In default of restitution, J. W. said that a whipping was ordered 685
by the chief in cases of debt and theft and also as a punishment [684]
for rape. W. L. said that if wampum presents were not forthcoming from a detected thief, the chief ordered him to a whipping log where twenty-five strokes were administered for the first offense, fifty for the second, and other increases up to one hundred. Execution was not sanctioned as a punishment in default of presents, but in each of the last three periods the victim of a theft was said to have the right of killing such a defaulting thief on a subsequent offense, if caught in the act (250). This was denied by Van der Donck in the first period.

All the sources and informants were agreed that murder was 682
punished (251). Williams and Lindeström in the first period and J. W. and W. L. in the fourth were the only ones to report that the nation took any part in administering the punishment (252). However, according to Van der Donck, the chief or friends at-

9: Kinietz E-4, 5 (1938) 1946
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Justice

246. Use of force by creditor

J. W. said that a creditor or victim of a theft did not use force himself to get restitution but applied to the chief. Failing restitution, the chief appointed a man to punish the offender by whipping. On a second or third offense, the chief appointed two men who tied offender to a tree and whipped him with twelve sticks, using one at a time until all were broken. Whipped him to death, was J. W.'s way of putting it. This he was quite sure was the punishment formerly used. Rape was also punished in the same way. 685 686

247. Redress of civil injuries

Roger Williams said force was used for restitution in case of theft involving different tribes. 681

254. Amount of wampum paid by murderer

Zeisberger said one hundred fathoms of wampum for the murder of a man and two hundred for that of a woman. A person who murdered a relative usually went free. 681 682

John Johnston reported that two hundred fathoms was the amount necessary to close the breach on the first offense, no amount being satisfactory for later offenses of this nature.

Captain Pipe—If a murder is committed the friends and relatives of the murderer collect by their own means and the contributions of others a quantity of wampum, which they deposit with the Chief of their own tribe from time to time until the stock amounts to an hundred and twenty fathoms if the murdered person be a man or an hundred and thirty fathoms if a woman. When this is effected the Chiefs call a council at which the nation, or as many as are so inclined, with the friends of the deceased and the murderer assemble. Here, after a few remarks by way of consolation to the afflicted relatives the acceptance of the wampum is proposed to them, and if they refuse eight fathoms are added to it and the presentation is repeated. If they persist in their refusal eight fathoms more are added and should they still reject the offer the connexions of the murderer [696]